

REMARKS

Claims 12 and 15-28 are currently pending in this application. By this amendment, claims 12 and 15-22 are amended, and claims 24-28 are added for the Examiner's consideration. Applicant has amended independent claim 12 to better clarify the invention and to more clearly distinguish over the cited prior art. In particular, independent claim 12 has been amended to include "a vent proximate the top of the hollow body configured to receive ambient air upon a patient's inhalation." Additionally, Applicant has amended dependent claims 15-22 to better clarify the claimed invention and to correct for minor typographical errors. Applicant respectfully submits that the above amendments and added claims do not add new matter to the application and are fully supported by the specification. Support for the amendments and added claims may be found at least in Figures 14-18.

In view of the above amendments and the following Remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

Rejections Under 35 U.S.C. § 102

Claims 12, 15, 16 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 3,861,386 issued to Harris, ET AL. ("the Harris '386 patent"). Applicant respectfully traverses this rejection for at least the following reason.

The Harris '386 patent is cited for disclosing, *inter alia*, a nebulizer that comprises a hollow body having a top and bottom, an intake port and delivery port proximate the top of the hollow body, a reversibly attachable connection port proximate the bottom of the hollow body, a nebulizer inlet and a nebulizer outlet proximate the bottom of the hollow body, and a baffle. See Office Action at pages 3-4. The claims have been amended to even more clearly distinguish over the Harris '386 patent. Specifically, for example, independent claim 12 has been amended to recite the feature of "a vent proximate the top of the hollow body configured to receive ambient air upon a patient's inhalation." Nowhere does the Harris '386 patent disclose such a feature.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102(b) rejection of claims 12, 15, 16 and 19. Since, and as discussed in more detail below, none of the

other prior art of record discloses or suggests all the features of the claimed invention, Applicant respectfully submits that independent claim 12, and all the claims that depend therefrom are allowable.

Rejection Under 35 U.S.C. § 103

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Harris '386 patent in view of U. S. Patent No. 4,333,450 issued to Lester ("the Lester '450 patent"). Applicant respectfully traverses this rejection for at least the following reason.

The Harris '386 patent is cited for disclosing the teaching as discussed above and the Lester '450 patent is cited for disclosing a nebulizer manifold that provides a baffle that is configured to protrude into a chamber connected to the connection port. *See* Office Action at page 4. As discussed above, independent claim 12, distinguishes over the Examiner's primary reference, the Harris '386 patent. Nowhere does the Harris '386 patent disclose "a vent proximate the top of the top of the hollow body configured to receive ambient air upon a patient's inhalation" as recited by independent claim 12. The Examiner's secondary reference, the Lester '450 patent, does not supply this missing claim limitation.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 17 and 18. Since none of the other prior art of record whether taken alone or in any combination, disclose or suggests all the features in independent claim 12, Applicant respectfully submits that claim 12, and all the claims that depend therefrom, are allowable.

Rejection Under 35 U.S.C. § 103

Claims 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Harris '386 patent in view of U. S. Patent No. 6,929,003 issued to Blacker ("the Blacker '003 patent"). Applicant respectfully traverses this rejection for at least the following reason.

The Harris '386 patent is cited for disclosing the teaching as discussed above and the Blacker '003 patent is cited for disclosing a nebulizer apparatus and method that provides an exhaust outlet that is sealable and includes a one-way valve. *See Id.* at 4-5. Independent claim 12, distinguishes over the Examiner's primary reference, the Harris '386 patent, as discussed in detail above. Nowhere does the Harris '386 patent disclose "a vent proximate the top of the top

of the hollow body configured to receive ambient air upon a patient's inhalation" as recited by independent claim 12. The Examiner's secondary reference, the Blacker '003 patent, also fails to remedy the deficiencies of the primary reference because it does not supply the missing claim limitation.

Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 20-22. Since none of the other prior art of record whether taken alone or in any combination, disclose or suggests all the features in independent claim 12, Applicant respectfully submits that claim 12, and all the claims that depend therefrom, are allowable.

Added Claims

Added claims 24-28 are directed to additional aspects of the invention, which are not disclosed or suggested in the art of record. Added claims 24-28 are allowable for reasons similar to independent claim 12.

CONCLUSION

Applicant submits that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated grounds for rejection have been overcome or rendered moot. Applicants have concurrently filed herewith a RCE. Accordingly, Applicant respectfully submits that all pending claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is thus respectfully requested to pass the above application to issue.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicant's undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested. Applicant respectfully requests that a timely Notice of Allowance be issued for this application.

Applicants believe that no extensions of time are required at this time. If extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. §1.136(a). Applicants believe that no further fees for net addition of claims are required at this time. Any fees required for further extensions of time and any fees for the net addition of claims are hereby authorized to be charged to our **Deposit Account No. 23-1951 (McGuireWoods LLP)**.

Respectfully submitted,



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